IN THE

Supreme Court of the United States

October Term, 1962

Nos. 119 and 142

WILLIAM J. MURRAY III, Infant, by MADALYN E. MURRAY, his mother and next friend, and MADALYN E. MURRAY, individually,
Petitioners,

vs.

JOHN N. CURLETT, President, SAMUEL EPSTEIN, Mrs. M. RICHMOND FARRING, ELI FRANK, JR., Dr. ROGER HOWELL, HENRY P. IRR, Dr. WILLIAM D. McELROY, Mrs. ELIZABETH MURPHY PHILLIPS, JOHN R. SHERWOOD, individually, and constituting the BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY,

On Writ of Certiorari to the Court of Appeals of Maryland

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, JAMES F. KOEHLER, O. H. ENGLISH, EUGENE STULL and M. EDWARD NORTHAM,
Appellants,

vs.

EDWARD LEWIS SCHEMPP, SIDNEY GERBER SCHEMPP, Individually and as Parents and Natural Guardians of ELLORY FRANK SCHEMPP, ROGER WADE SCHEMPP and DONNA KAY SCHEMPP,

On Appeal from a District Court of Three Judges for the Eastern District of Pennsylvania

BRIEF OF SYNAGOGUE COUNCIL OF AMERICA AND NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL AS *AMICI CURIAE*

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BRIEF OF SYNAGOGUE COUNCIL OF AMERICA AND NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL AS *AMICI CURIAE*

Interest of the *Amici*

This brief is submitted on behalf of the Synagogue Council of America and the National Community Relations Advisory Council. We have sought the consent of counsel for the parties to the filing of this brief. Counsel for petitioners in No. 119 and counsel for appellees in No. 142 have consented. Counsel for respondents in No. 119 and for appellants in No. 142 have stated that they neither consent to nor oppose the filing of such a brief. A motion for leave to file such a brief was submitted to this court on January 4, 1963.

The Synagogue Council of America is a co-ordinating body consisting of the organizations representing the three divisions of Jewish religious life: Orthodox, Conservative and Reform. It is composed of:

Central Conference of American Rabbis, representing the Reform rabbinate;

Rabbinical Assembly, representing the Conservative rabbinate;

Rabbinical Council of America, representing the Orthodox rabbinate;

Union of American Hebrew Congregations, representing the Reform congregations;

Union of Orthodox Jewish Congregations of America, representing the Orthodox congregations;

United Synagogue of America, representing the Conservative congregations.

The National Community Relations Advisory Council is a policy-forming and coordinating body for national and local Jewish organizations concerned with community rela-

tions. The constituent organizations of the Council, joining in this brief, include, in addition to the congregational bodies mentioned above:

American Jewish Congress
Jewish Labor Committee
Jewish War Veterans of the United States

and the 57 local Jewish Community Councils, covering most of the major cities in the United States, listed in the margin.*

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* Jewish Welfare Fund of Akron; Albany Jewish Community Council; Atlanta Jewish Community Council; Federation of Jewish Charities of Atlantic City, N. J.; Baltimore Jewish Council; Jewish Community Council of Metropolitan Boston; Jewish Federation of Broome County, N. Y.; Community Relations Committee of the Jewish Federation of Camden County, N. J.; Jewish Community Federation, Canton, Ohio; Central Florida Jewish Community Council; Cincinnati Jewish Community Relations Committee; Jewish Community Federation, Cleveland, Ohio; United Jewish Fund and Council of Columbus, Ohio; Connecticut Jewish Community Relations Council; Jewish Federation of Delaware; Jewish Community Council of Metropolitan Detroit; Eastern Union County, N. J., Jewish Community Council; Jewish Community Council of Easton and Vicinity; Erie Jewish Community Welfare Council; Jewish Community Council of Essex County, New Jersey; Jewish Community Council of Flint, Mich.; Jewish Federation of Fort Worth, Tex.; Community Relations Committee of the Hartford (Conn.) Jewish Federation; Indiana Jewish Community Relations Council; Indianapolis Jewish Community Relations Council; Jewish Community Council, Jacksonville, Florida; Community Relations Bureau of the Jewish Federation and Council of Greater Kansas City; Kingston, N. Y., Jewish Community Council; Conference of Jewish Organizations, Louisville, Ky.; Jewish Community Relations Council of Memphis; Milwaukee Jewish Council; Jewish Community Relations Council of Minnesota; Nashville Jewish Community Council; Jewish Federation of New Britain, Conn.; New Haven Jewish Community Council; Norfolk Jewish Community Council; Jewish Community Relations Council of Oakland, Calif.; Jewish Community Council of Paterson, N. J.; Jewish Community Council of Peoria, Ill.; Jewish Community Council,

The organizations affiliated with the Synagogue Council of America and the National Community Relations Advisory Council include in their membership the overwhelming majority of Americans affiliated with Jewish organizations.

The organizations submitting this brief are committed to the belief that the absolute separation of church and state is the surest guaranty of religious liberty and has proved of inestimable value both to religion and to the community generally. We believe also that above all other institutions our public schools must be kept free of sectarian strife and involvement in religious practices and teachings.

For these and other reasons, we submitted a brief in *People ex rel. McCollum* v. *Board of Education of Champaign, Ill.*, 333 U. S. 203 (1948), and in *Engel* v. *Vitale*, 370 U. S. 421 (1962). Because the decisions under review here concern the continued validity of the principles declared in *McCollum* and reaffirmed in *Engel*, we have applied for leave to submit this brief *amici curiae*.

Perth Amboy, N. J.; Jewish Community Relations Council of Greater Philadelphia; Jewish Community Relations Council, Pittsburgh; Jewish Federation of Portland, Maine; Jewish Community Council, Rochester, N. Y.; Jewish Community Relations Council of St. Louis; Community Relations Council of San Diego; San Francisco Jewish Community Relations Council; Jewish Community Council, Schenectady, N. Y.; Scranton-Lackawanna Jewish Council; Jewish Community Council of Toledo; Jewish Federation of Trenton; Tulsa Jewish Community Council; Jewish Community Council, Utica; Jewish Community Council of Greater Washington (D. C.); Jewish Federation of Waterbury; Wyoming Valley Jewish Committee; Jewish Community Relations Council of the Jewish Federation of Youngstown, Ohio.

Statement of the Cases

In the *Murray* case (No. 119), this Court granted certiorari to review a decision of the Maryland Court of Appeals which, by a vote of 4 to 3, upheld the constitutionality of a Rule of the Board of School Commissioners of Baltimore City directing that each public school "shall be opened by the reading, without comment, of a chapter in the Holy Bible and or the use of the Lord's Prayer." The Rule further provides that the Douay (Catholic) version "may be used by those pupils who prefer it."

The *Schempp* case (No. 142) presents an appeal from a federal district court of three judges, convened pursuant to 28 U. S. C. Section 2284, which declared unconstitutional and enjoined the further enforcement of a Pennsylvania statute providing that "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each day, by the teacher in charge." By amendment which became effective in December, 1959, the statute had been modified to provide that "Any child shall be excused from such Bible reading or attending such Bible reading upon the written request of his parent or guardian."

In both cases, the basis for the challenge to the constitutionality of the rule or statute is substantially the same: In each case it was asserted that the practice provided for violated the First Amendment's guaranty of religious freedom, its ban on laws respecting an establishment of religion, and the Fourteenth Amendment's guaranty of the equal protection of the laws.

Constitutional Provisions Involved

The First Amendment to the United States Constitution provides in part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

The first section of the Fourteenth Amendment to the United States Constitution provides, in part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Summary of Argument

Both the establishment and the free exercise aspects of the First Amendment are applicable to the States. Under the former clause, a State-sponsored practice is unconstitutional not only if it aids one religion or prefers one religion over another, but also if it aids all religions or if it forces persons to profess a belief or disbelief in religion or punishes them for entertaining or professing religious beliefs or disbeliefs. A State-sponsored religious practice which confers official sanction on the religious literature or liturgy of a particular faith violates the no-establishment clause in that it prefers one religion over others. But even if the practice could be deemed nonsectarian, it would nevertheless be unconstitutional as an aid to all religions.

A State-sponsored religious practice which is in fact not voluntary in its operation violates both the establishment and free exercise clauses. A statutory provision or departmental regulation permitting children to be excused from participation does not in reality make participation truly voluntary. However, even if it did, the practice would still be unconstitutional under the no-establishment clause of the First Amendment.

The fact that a religious practice in the public schools is of long standing does not make it constitutional. Even if the long duration of the practice could otherwise be deemed in the nature of a practical construction, it is of no evidentiary value where the constitutionality of the practice has been continually challenged almost since it was instigated.

Measured by these standards, neither of the practices challenged in the cases before this Court can stand. This conclusion is reinforced by the recent decision of this Court in the *Engel* case.

Invalidation of State-sponsored devotional reading of the Bible does not exclude the Bible from the public schools, nor does it preclude its study as a secular subject. Similarly, invalidation of the Baltimore regulation for the collective recitation of the Lord's Prayer would not affect any right of individual children to engage in private or individual prayer of their own choice during public school hours in a manner which does not interfere with the regular conduct of public school operations.

However, the fact that the Bible and even the Lord's Prayer may be studied in the public schools as a work of literature, or as a phase in the history of civilization or as any other aspect of secular studies, does not mean that

Bible reading as a devotional act or Lord's Prayer recitation can constitutionally be justified as a means of teaching moral values or of elevating ethical standards. Such an interpretation of the no-establishment clause would make it meaningless.

A judicial decision forbidding State-sponsored religious practices such as Bible reading or Lord's Prayer recitation does not manifest hostility to religion, any more than the constitutional provisions on which it is based indicated any hostility to religion on the part of the fathers of our Constitution. On the contrary, history has validated the premise upon which the First Amendment is based that the separation of church and state is best for religion and best for the state.

ARGUMENT

The Pennsylvania statute requiring daily reading from the Bible in the public schools and the Baltimore school board rule requiring daily reading from the Bible or recitation of the Lord's Prayer violate the First Amendment of the United States Constitution as made applicable to the states by the Fourteenth Amendment.

I. The Applicable Principles

A. The First Amendment and the States

If there is any principle in constitutional law that can be said to be settled beyond further question it is that, by virtue of the Fourteenth Amendment, the First Amendment, both in its "establishment" aspect and in its "free exercise" aspect, is a restriction upon state action no less

than federal action. *People ex rel. Everson* v. *Board of Education*, 330 U. S. 1 (1947); *People ex rel. McCollum* v. *Board of Education*, 333 U. S. 203 (1948); *Zorach* v. *Clauson*, 343 U. S. 306 (1952); *McGowan* v. *Maryland*, 366 U. S. 420 (1961); *Torcaso* v. *Watkins*, 367 U. S. 488 (1961); *Engel* v. *Vitale*, 370 U. S. 421 (1962); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940). Moreover, the scope of the restriction under the amendment upon State action is no less than upon federal action. *Everson, supra; McCollum, supra; Torcaso, supra; Engel, supra.*

The plaintiffs in both cases before this Court contend that each of the challenged practices violates both aspects of the First Amendment—the establishment aspect and the free exercise of religion. Undoubtedly, the two aspects are closely interrelated; indeed, they may be said to be two sides of a single coin. However, as each aspect is considered, different emphases emerge. Specifically, when a practice is challenged as a violation of the establishment ban, judicial attention would primarily be on whether the practice involves State aid to religion. When it is challenged as a violation of the free exercise guaranty, judicial attention would be focused primarily on compulsion.

B. *The Meaning of the Establishment Clause*

In *Everson*, *McCollum*, *McGowan* and *Torcaso*, this Court spelled out in definitive detail the meaning of the ban on establishment of religion. In each of those cases, the Court said (see, *e.g.*, *Everson*, *supra*, 330 U. S. at 15-16):

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither

> can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."

It should be noted that in *Zorach* v. *Clauson*, *supra*, decided since the *McCollum* case, this Court expressly affirmed its holding forbidding religious teaching or practices within the public school. In the *Zorach* opinion, the Court held that *McCollum* did not prohibit the schools from adjusting their schedules to take into account the desire of some of their students to attend religious instruction *off public school* premises. In the words of the Court, the intention of the *Zorach* opinion is merely to uphold the authority of the school to "close its doors or suspend its operations as to those who want to repair to a religious sanctuary for worship or instruction. No more than that is undertaken here." *Id.* at 314. At the same time the Court made it plain that in all respects "We follow the McCollum case." *Id.* at 315. It left no doubt that under the Federal Constitution religious teachings and practices may not be

brought *into* public school premises. "Government," said the Court, "may not finance religious groups nor undertake religious instruction *nor blend secular and sectarian education* nor use secular institutions to force one or some religion on any persons." *Id.* at p. 314 (Italics added.)

In any event, whatever doubts may have been raised by *Zorach* were put to rest in *Engel, supra*, where this Court held specifically and unequivocally that State-sponsored religious exercises in public schools are constitutionally impermissible.

We urge that the practices under attack in the present case violate both aspects of the "religion" clause of the First Amendment. They are not merely laws which "aid one religion" and "prefer one religion over another," but also laws which at best "aid all religions" and which force persons to "profess a belief or disbelief" in religion and, by the divisiveness of their operation, punish them for "entertaining or professing religious beliefs or disbeliefs." We urge that these cases illustrate once again that under our tradition, religious freedom can best be guaranteed if the wall of separation between church and state is maintained secure and impregnable.

C. *Compulsion and Voluntariness*

While the issue of voluntariness vs. compulsion may be relevant in respect to the attack on the practices involved in the present suits under the free exercise aspect of the cases, it is completely irrelevant in respect to the establishment aspect. Here the critical test is not compulsion (although in respect to religious practices or teachings compulsion would violate the establishment ban as well as the free exercise guaranty), but State aid to religion. Hence, even if pupil participation in the religious practices were

entirely voluntary, the First Amendment's ban on 'establishment would still be violated by the aid accorded religion by the State through its public school system and by State participation in religious affairs.

This is one of the vital points in these cases. In *Schempp*, the Pennsylvania legislature amended the Bible reading statute in an effort to eliminate the compulsion issue from the controversy, and in *Murray*, the majority of the Maryland Court of Appeals relied heavily on the provision in the Rule permitting children to be excused on request. However, this Court stated clearly and unambiguously in *McCollum* that it was "unnecessary to consider" the issue of voluntariness of participation since it could not affect the constitutionality of a State-sponsored religious practice (333 U. S. at 207n).

Nothing in the *Zorach* case impairs the validity of that holding. On the contrary, as has been indicated, the Court in *Zorach* went out of its way to make it clear that it was reaffirming, not overruling, *McCollum*.

Thus, both *McCollum* and *Zorach* make it clear that, whatever may be the law in respect to "religious exercise or instruction" in the respective religious sanctuaries of the various faiths, "religious exercise or instruction" may not be "brought to the classrooms of the public schools," irrespective of any specific proof of compulsion or other non-voluntariness.

Again, if any doubt remained after *Zorach*, it was put to rest in *Engel*. There, too, the State court had laid great emphasis on the fact that participation was voluntary since dissenting children could be excused on request. Reiterating what had been held in *McCollum*, this Court expressly ruled, however, that (370 U. S. at 430):

> The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not.

D. *Sectarianism and Non-Sectarianism*

What we have said regarding the issue of compulsion v. voluntariness is likewise applicable to the issue of sectarianism v. non-sectarianism. We show below that the practices complained of in these suits are sectarian, i.e., they represent the teachings and beliefs of one faith which are not shared but indeed are rejected by other faiths. However, even if this were not so—even if the State-sponsored Bible reading and Lord's Prayer recitation were equally acceptable to all major faiths—they would still be unconstitutional under the principles announced in the *Everson*, *McCollum*, *Zorach* and *Engel* cases. Under those principles, government not only may not aid one religion or prefer one religion over another, but also, because of the First Amendment, may not "aid all religions." The application of this principle was spelled out in the *McCollum* case, where it was found "unnecessary to consider" the issue of sectarianism in disposing of a claim under the Establishment Clause (333 U. S. at 207n).

It is our contention that the practices complained of in these suits accord to Protestantism governmental advantages not enjoyed by Catholicism or Judaism (or indeed certain denominations within Protestantism) and to Christianity governmental advantages not enjoyed by Judaism and other non-Christian faiths. But the *McCollum* case

makes it clear that, even if Protestantism, Catholicism and Judaism and other faiths were equally accorded the favors of the public school system, the prohibitions of the First Amendment would be violated by the practices here. That amendment imposes upon the State a mandate not merely of impartiality among competing faiths, but of neutrality as between religion and non-religion, since "* * * a state cannot * * * aid any *or all* religious faiths or sects in the dissemination of their doctrines and ideals. * * *" 333 U. S. at 211. (Italics added.) See also *Everson*, 330 U. S. at 18.

This conclusion was reinforced in *Torcaso*. The religious oath there in issue was entirely non-sectarian. It required merely an affirmation of a belief in the existence of God but did not impose upon anyone the obligation to define what he meant by the word "God." It thus allowed the oath to be taken (or affirmation to be made) equally by a Protestant, a Catholic or a Jew. Nevertheless, that fact did not save the oath requirement from invalidation under the First Amendment.

Here, again, *Engel* supplies the conclusive answer. The entire purpose of the formulation of a new prayer by the New York Board of Regents was to avoid the charge of sectarianism, and the fact that the prayer was "non-sectarian" or "non-denominational" was asserted as its chief virtue. Indeed, it was this effort at non-sectarianism that evoked a protest by the leaders of the Lutheran Church of Our Redeemer in Peekskill, New York, who charged that the name of Jesus had "deliberately been omitted to mollify non-Christian elements," and that the prayer "therefore is a denial of Christ and His prescription for a proper prayer. As such it is not a prayer but an abomination and a blasphemy." *Peekskill Evening Star*, January 16, 1951.

The purported non-sectarianism of the Regents' prayer did not render it constitutional. The "fact that the prayer may be denominationally neutral, * * *" this Court stated, cannot "serve to lift it from the limitations of the Establishment Clause * * *" 370 U. S. at 430. The Court said further (370 U. S. at 436):

> To those who may subscribe to the view that because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:
>
> [I]t is proper to take alarm at the first experiment on our liberties. * * *

It follows, therefore, that in the present case, even if the religious programs within the public schools of Baltimore or Pennsylvania were truly non-sectarian—which, we emphatically assert, they are not—they would nevertheless be unconstitutional as a law respecting an establishment of religion as that term has been repeatedly defined and applied by this Court.

E. Establishment, Free Exercise and Compulsion

The definitive interpretation of the establishment clause set forth in the *Everson*, *McCollum*, *McGowan* and *Torcaso* decisions, which we have quoted above, makes it clear that compulsion may effect a violation of that clause as well as of the free exercise clause. But not all compulsion necessarily violates the establishment ban; there are certain types of compulsion which will not constitute a law respecting an establishment of religion, and yet constitute one prohibiting the free exercise thereof.

The test, as elicited from the relevant decisions of this Court, is as follows: If compulsion is exercised to impel participation in *religious* conduct, it constitutes a law respecting an establishment of religion as well as one prohibiting the free exercise thereof. If, on the other hand, it impels participation in *secular* conduct, it can only be a law prohibiting the free exercise of religion.

Thus, as the *Everson*, *McCollum*, *McGowan* and *Torcaso* cases state, it would be a violation of the establishment ban to "force • • • a person to go to • • • church • • • or • • • to profess a belief or disbelief in any religion." Going to church and professing belief in religion (or, as in the present cases, devotional reading of the Bible and recitation of the Lord's Prayer) are obviously religious acts and coerced participation establishes religion no less than it prohibits its free exercise.

On the other hand, non-polygamous marriages (*Reynolds* v. *United States*, 98 U. S. 145 (1878)); military training (*Hamilton* v. *Regents of the University of California*, 293 U. S. 245 (1934)); vaccination (*Jacobson* v. *Massachusetts*, 197 U. S. 11 (1905)); saluting the American flag and pledging allegiance to it (*West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624 (1943)), are all deemed by the general community and the courts to be secular rather than religious conduct, and compulsory participation therein does not violate the ban on establishment of religion, although it may (or may not) violate the ban on laws prohibiting the free exercise of religion.

The distinction is a critical one. For if the act is secular it is within the constitutional competence of the State, and therefore the sole question remaining is whether a particular religiously motivated person has a constitutional right under the free exercise clause to be exempted from participating therein. On the other hand, if the conduct is re-

ligious, then it is outside the competence and jurisdiction of the State or its instrumentalities, and even if participation were not compulsory the conduct would be unconstitutional.

It is clear from this that the fact that the Baltimore Rule and the Pennsylvania statute provide for the excusing of children from participation does not affect the invalidity of either under the establishment ban of the First Amendment.

F. *The Fiction of Voluntariness*

It may be doubted that any action of an individual in respect to his government can be said to be truly voluntary. How many citizens will refuse to give their names to an inquiring policeman even though the policeman may have no basis in law for asking the question? Thomas Jefferson recognized this when, in a letter written on January 23, 1808, to *Rev.* Samuel Miller, he explained his refusal to issue a Presidential proclamation for prayer or fasting on the ground that any such official action must carry to "oppose who disregard it . . . some degree of proscription perhaps in public opinion." II Writings of Jefferson, Monticello, ed., 428-429.

This fact, too, was clearly recognized by this Court in *Engel*, when it said (370 U. S. at 431):

> When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.

Whatever may be the case with respect to adults, where children compelled by law to attend school are concerned

it is completely unrealistic to suggest that their participation in a religious exercise, sponsored, approved and conducted by the public school authorities, is purely voluntary. This was recognized by the four Justices joining in the concurring opinion of Mr. Justice Frankfurter in the *McCollum* case (333 U. S. at 227):

> * * * That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend * * *.

Other courts have recognized that the nominal privilege of non-participation in religious practices does not eliminate the element of "force or influence" or remove the punishment "for entertaining or professing religious beliefs or disbeliefs." Thus, 50 years ago, the Supreme Court of Illinois rejected the argument that pupils were free to exclude themselves from religious practices, saying that any such action by a pupil "places him at a disadvantage in the school, which the law never contemplated." *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 351. Twenty years earlier, the Supreme Court of Wisconsin similarly concluded that "the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion and subjected to reproach and insult." *State ex rel. Weiss* v. *District Board*, 76 Wis. 177, 199-200. An Iowa court came to the same necessary conclusion in *Knowlton* v. *Baumhover*, 182 Iowa 691, 699-700. See also: *Kaplan* v. *Independent School District of Virginia*, 171 Minn. 142, 155-156, dissenting opinion.

A searching examination of the claim of voluntarism in respect to introduction of religious practices in the public school program was made in the case of *Tudor v. Board of Education of the Township of Rutherford*, 14 N. J. 31, 100 A. 2d 857, cert. denied 348 U. S. 816. There, speaking for a unanimous court, Chief Justice Vanderbilt, after examining the various authorities, overruled the contention of voluntarism on the ground that it "ignores the realities of life."

The Record in the case of *Chamberlin v. Dade County Board of Public Instruction*, now before this Court on appeal from the Supreme Court of Florida (October Term, 1962, No. 520) contains the most comprehensive consideration by qualified psychologists, psychiatrists and educators of the question whether the right to request to be excused from participation in a public school sponsored religious exercise makes such participation voluntary. The unanimous conclusion of these qualified authorities is that it does not.

G. *Religion as a Secular Subject*

The complaints in these actions do not demand, nor do the plaintiffs assert, any right to the complete exclusion of religion or reference to God from the public schools. Nothing in the Constitution of the United States requires the school authorities to remove all matter relating to religion from the school curriculum. It is not contended that, for example, the Bible may not be studied in the public schools as a work of literature, or Handel's *Messiah* as a work of music, or *The Last Supper* as a work of art. Nor is it contended that the influence of religion and religious institutions upon history may not be studied in the public

schools. No violation of the establishment ban is involved in any of these since literature, music, art, and history are all secular subjects properly within the competence of the public school teaching authorities.

The complaints in these actions are addressed to the inculcation of religious beliefs or the conducting of religious programs. It is constitutional to study the Bible as a work of literature; it is, we contend, unconstitutional to read it as an act of devotion. If the approach to the Bible or religious music or art is as an intellectual study, it is proper in the public schools; if the approach is worship or faith, it belongs in the home, church and synagogue.

This distinction was well expressed by Mr. Justice Jackson in his concurring opinion in the *McCollum* case. Agreeing with the Court's decision that released time classes on public school premises were unconstitutional, he warned against complete exclusion of religion from the curriculum, saying (333 U. S. at 235-236):

> Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. * * * One can hardly expect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.

It is clear that it was to this type of religious matter in the public school that Mr. Justice Jackson was referring in his remark—that "it may be doubted whether the Constitution, which, of course, protects the right to dissent, can be construed also to protect one from the embarrass-

ment that always attends nonconformity in religion, politics, behavior or dress" (333 U. S. at 233). A Jehovah's Witness child who refuses to salute the flag or pledge allegiance to it (Justice Jackson wrote the majority opinion in the *Barnette* case), a Christian Scientist child who refuses to attend the biology class, or a Jewish child who stays away from school on his religious holiday, may all suffer some embarrassment because of their exercise of their constitutionally protected right of religious nonconformity. But since flag saluting, biology and general public school studies are all acts of secular conduct on the part of the public school authorities, there is no establishment of religion involved and hence no right to require the school authorities to eliminate the flag salute ceremony, drop the biology course or close the public schools on the Jewish Day of Atonement. Where, however, the conduct complained of is religious—as in *McCollum, Engel* and the present cases—there is a constitutional requirement to discontinue that conduct. This is what Mr. Justice Jackson clearly intended—else he would not have concurred in the decision in the *McCollum* case but would have vigorously dissented.

H. Religion as a Means and an End

On the whole, the decisions of this Court have been consistent in interpreting the meaning of the no-establishment clause. Under these decisions, the First Amendment, which merely makes explicit what is implicit in the Constitution itself, requires government in the United States to be secular. Its ends must be exclusively secular and, in achieving them, it may use only secular means. The Preamble to the Constitution sets forth the purposes

for which the new republic in the Western Hemisphere was established, all of them secular: "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty. * * *"

When government effects its secular purposes, its action may, as an incidental by-product, affect religion, either beneficially or detrimentally—indeed, one would assume that this would generally be so—and that fact, this Court has consistently held, does not restrict government in the manner in which it effects its purposes. Thus, as in the *Everson* case, a state may seek to achieve its secular purpose of protecting children from the hazards of traffic by providing them with free transportation to the schools they attend, and the fact that an incidental by-product benefits religion by relieving parochial schools of what might otherwise be a necessary part of their budget, a majority of this Court held, does not render its action unconstitutional.

So, too, in pursuing its secular purpose of assuring to every person one day a week for rest, relaxation and family togetherness, a majority of this Court has held that the state may require businesses to close down on Sundays, even though the Christian religion, or that part of it which observes Sunday as the Sabbath, is incidentally benefitted thereby, while those faiths which observe Saturday as the Sabbath are detrimentally affected. *McGowan* v. *Maryland*, 366 U. S. 420 (1961); *Two Guys* v. *McGinley*, 366 U. S. 582 (1961); *Gallagher* v. *Crown Kosher Market*, 366 U. S. 617 (1961); *Braunfeld* v. *Brown*, 366 U. S. 599 (1961).

On the other hand, if the governmental purpose is to aid religion, its action transgresses the limits of its power prescribed by the Constitution and the First Amendment.

As this Court said in *McGowan*: "We do not hold that Sunday legislation may not be a violation of the 'Establishment' Clause if it can be demonstrated that its purpose—evidenced either on the face of the legislation, in conjunction with its legislative history, or in its operative effect—is to use the State's coercive power to aid religion": (366 U. S. at 453).

For that reason, this Court in *McCollum*, with only Mr. Justice Reed dissenting, invalidated a program of released time which involved "a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith" (333 U. S. at 210). For the same reason, in *Torcaso*, the Court, with no dissent, invalidated a requirement in a State constitution that all public officers, as a condition to qualification, take an oath that they believe in the existence of God.

Moreover, in pursuing secular ends, government may use only secular means. One of the arguments stated by Madison in his monumental *Memorial and Remonstrance Against Religious Assessments* in opposition to taxation for religious purposes, was that government's employment of "Religion as an engine of Civil policy • • • [is] an unhallowed perversion of the means of salvation." *II Writings of Madison* 183, 185-186. A great statesman and jurist, Jeremiah S. Black, stated that the fathers of our Constitution "built up a wall of complete and perfect partition" between church and state in order that "one should never be used as an engine for the purposes of the other." Black, *Essays and Speeches* 53 (1885).

To hold that government may employ religion as a means to effect secular ends that are properly within governmental competence would make the First Amendment meaningless. Practically every defense of religious in-

struction in public schools is expressly predicated on the not unreasonable assertion that religious education leads to morality and good citizenship. If religion could be used to achieve the obviously secular goal of morality and good citizenship, it would follow not only that religion could constitutionally be taught in the public schools, but also that tax-raised funds could be used to finance religion and religious education. Moreover, the government could reasonably find that some religions, such as Protestantism, Catholicism and Judaism, are more likely to inculcate good citizenship than others (Jehovah's Witnesses, for example) and, therefore, could aid the former and not the latter—a conclusion which this Court has expressly rejected. *Fowler* v. *Rhode Island*, 345 U. S. 67 (1953).

Because religion may not be employed by government as a means to achieve secular ends, this Court turned a deaf ear to the argument of the State of Maryland in *Torcaso* that believers in God make better public officials than do non-believers. Again, in *Engel*, the expressed purposes of the New York Board of Regents in recommending the daily recitation of the prayer were both secular and religious. The Regents issued a "policy statement" that asserted that Americans have always been religious, that a program of religious inspiration in the schools will assure that the children will acquire "respect for lawful authority and obedience to law [and that] each of them will be properly prepared to follow the faith of his or her father, as he or she receives the same at mother's knee or father's side and as such faith is expounded and strengthened by his or her religious leaders." N. Y. *Times*, December 1, 1951. Thus, the Regents sought to achieve both a religious end and a secular end through the use of religious means. By sponsoring recitation of their prayer they sought to assure that

"each of them [public school children] will be properly prepared to follow the faith of his or her father." This is obviously a religious purpose and, therefore, beyond the constitutional competence of government. The second purpose sought to be achieved by the Regents was to assure that public school children will acquire "respect for lawful authority and obedience to law." This, of course, is a secular end, but its effectuation could not constitutionally be sought through a religious activity.

It follows from this that even if, as asserted by respondents in *Murray*, the purposes of the State sponsored Bible reading and Lord's Prayer recitation is to further moral and ethical values, that fact does not save the exercises from invalidity under the First Amendment.

I. Long Standing Practices are not Necessarily Constitutional.

In both cases before this Court, the practices of public school sponsored Bible reading and Lord's Prayer recitation are defended on the ground that they are of long standing. We submit that this inference of constitutionality from age is erroneous.

Extended discussion of this ground for upholding the action of the Board of Education is not necessary here. The same assertion was made in *McCollum*, *Torcaso* and *Engel*. It was also made in a different context in *Brown v. Board of Education*, 347 U. S. 483 (1954). In all cases it was rejected.

Whatever evidentiary value the long duration of a particular practice may have is entirely absent where the constitutionality of the practice has been continually challenged, often successfully. The cases are summarized in Johnson and Yost, *Separation of Church and State*, 1948,

pp. 33-74; Boles, *The Bible, Religion and the Public Schools*, 1961, pp. 58-135; Note, 45 A. L. R. 2d 742.) It is true that in most cases the challenges were made under State constitutional provisions rather than under the First Amendment, but the reason for that was that until *Everson* it was not generally recognized that the Amendment's no-establishment clause was applicable to the States. Once the *Everson* case was decided, the challenges, whether in State or Federal tribunals, were based upon the Amendment. See *e.g.*, *Doremus* v. *Board of Education*, 5 N. J. 435 (1950); *Curden* v. *Bland*, 199 Tenn. 665, 288 S. W. 2d 718 (1956). But whether before or after *Everson*, and whether expressly referring to the First Amendment or not, the principles upon which the practices were challenged were principles implicit in the First Amendment.

We submit, therefore, that no inference of constitutionality can be drawn from the fact that Bible reading and Lord's Prayer recitation may be of long duration in some of the States.

II. The Specific Religious Practices

A. Bible Reading

1. *The Fiction of Non-Sectarianism.* In both the *Schempp* and *Murray* cases, it appears that passages from the Old and New Testament are within the purview of the statutory mandate. In the *Schempp* case, the statute does not specify which version of the Bible is to be read, but the record shows that the only version purchased by the school authorities for use in compliance with the statute was the King James or Protestant version. (Jurisdictional Statement, p. 52, fn. 10.) In the *Murray* case, the Rule assumes

that the version ordinarily used will be the King James version, although it is specifically provided that the Douay or Catholic version "may be used by those pupils who prefer it." (Petition for Certiorari, pp. 4-5) (There is no provision for use of a Jewish version by Jewish children.) All the reported cases on Bible reading in which the version of the Bible used is disclosed involved the Protestant version. See, Johnson and Yost, *supra*; Boles, *supra*; Keesecker, *Legal Status of Bible Reading*, U. S. Office of Educ., Bull. No. 14 (1930).

We submit that a statute providing for reading from the Holy Bible in the public schools aids and prefers the Christian religion to the extent that the reading is from the New Testament and aids and prefers Protestantism to the extent that the reading is from the King James version.

The plaintiffs' contention that the statutes herein are preferential cannot be met by arguing that the Bible is "non-sectarian." (Of course, as we have shown above, the *Everson*, *McCollum*, *Zorach* and *Engel* decisions establish that the claim of non-sectarianism is irrelevant. Nevertheless, we deem it important to point out that the claim is purely fictional.)

Characterizing the King James version of the Bible as "non-sectarian" is, we believe, an affront to adherents to the Catholic faith. A Catholic child commits a grave sin if he knowingly owns or reads from the Protestant version of the Bible. (Bouscaren and Ellis, *Canon Law: Text and Commentary* (1946), Canon 1399.) Catholic children who have received the Protestant Bible distributed by the Gideon Society in a number of schools have been directed by their

priests to return them (Religious News Service, Dec. 6, 1960), and the distribution itself has been condemned by the Catholic Church. (Catholic Bulletin, May 28, 1940.)

The sectarian nature of the Bible was considered in detail by the Supreme Court of Illinois in *People ex rel. Ring v. Board of Education, supra.* The court pointed out that reading from the Bible in public schools necessarily gave the pupils instruction in "* * * the divinity of Jesus Christ, the Trinity, the resurrection, baptism, predestination, a future state of punishments and rewards, the authority of the priesthood, the obligation and effect of the sacraments, and many other doctrines about which the various sects do not agree."

The entire non-sectarian claim is belied by the history of Bible reading legislation and litigation in this country which shows that much of it sprang from anti-Catholic prejudice in the 19th century and that it was productive of bitter controversy because of Catholic rejection of the King James version of the Bible. Beale, *History of Freedom of Teaching in American Schools* (1941), 102-103; Myers, *History of Bigotry in the United States* (1943), 176; Billington, *Protestant Crusade* (1938), 220-230, 388, 414; O'Gorman, *History of the Roman Catholic Church in the United States*, 365-360; Connors, *Church-State Relationships in Education in the State of New York* (1951), 61. See also *Commonwealth v. Cooke*, 7 Am. L. Reg. 417 (1859).

We have outgrown the period of virulent anti-Catholic prejudice. But it must not be supposed that the introduction of religious instruction and practices in the public schools does not even today bring with it inter-religious tensions, ill-feeling and acrimony. Of all places, the public

schools should not be the arena for these conflicts. As Justice Frankfurter stated in the *McCollum* case: "In no activity of the State is it more vital to keep out divisive forces than in its schools" (333 U. S. at 231).

That any reading from the New Testament is sectarian as far as Jewish children are concerned is hardly open to question. The record in the *Schempp* case established this conclusively. As stated in Chief Judge Biggs' opinion for a unanimous Court:

> We have the testimony of expert witnesses. Dr. Solomon Grayzel testified that there were marked differences between the Jewish Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures. Dr. Grayzel testified that portions of the New Testament were offensive to Jewish tradition and that, from the standpoint of Jewish faith, the concept of Jesus Christ as the Son of God was "practically blasphemous."

The claim of non-sectarianism was considered most thoroughly and carefully in the *Tudor* case, *supra*, in which the New Jersey Supreme Court condemned use of the public schools for distribution of Bibles by the Gideon Society. On the issue of sectarianism, the Court's unanimous opinion said:

> A review of the testimony at the trial convinces us that the King James version of the Gideon Bible is unacceptable to those of the Jewish faith. In this regard Rabbi Joachim Prinz testified:
>
> The New Testament is in profound conflict with the basic principles of Judaism. It is not accepted by the Jewish people as a sacred book. The Bible of the Jewish people is the Old Testament. The New Testament is not recognized as part of the Bible.

The court then went on to find that "the King James version of the Bible is as unacceptable to Catholics as the Douay version to Protestants."

In *Chamberlin* v. *Dade County Board of Public Instruction*, *supra*, the record likewise shows conclusively that the New Testament, and indeed the King James Version of the Old Testament, are unacceptable to Judaism and are thus sectarian. Indeed, we know of no Rabbi or other recognized Jewish student of religion who disagrees with this conclusion.

2. *Bible Reading as an Aid to All Religions.* The defense of "non-sectarianism," even if it were based on reality rather than fiction, has no relevancy to a determination of the validity of the challenged statutes under the First Amendment. The justification of "non-sectarianism" was adopted by State courts which were required to decide whether Bible reading or prayer recitation violated State constitutional prohibitions of "sectarian" teaching or practices in the public schools.* These cases were practically all decided before it was recognized that the Fourteenth Amendment subjected the States to the First Amendment's prohibitions of laws respecting an establishment of religion or prohibiting its free exercise. Hence, the limitations upon governmental action in the field of religion imposed by the First Amendment were deemed irrelevant and were not considered.

Today, however, State statutes providing for Bible reading in the public schools must be tested by the standard

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* *Hackett* v. *Brooksville Grade School Dist.*, 120 Ky. 608 (1905); *Billard* v. *Board of Education*, 69 Kans. 53 (1904); *Church* v. *Bullock*, 104 Tex. 1 (1908); *Wilkerson* v. *City of Rome*, 152 Ga. App. 762 (1921); *People* v. *Stanley*, 81 Colo. 276 (1927); *Kaplan* v. *Independent School District*, 171 Minn. 142 (1927).

prescribed by the First Amendment as well as by State constitutions. Under the First Amendment, as we have shown, it make no difference that the challenged State action is "non-sectarian," i.e., non-preferential as among the religious sects.

We submit, therefore, that, even if devotional Bible reading were acceptable to the three major faiths (without according consideration to the religious convictions of others than Protestants, Catholics and Jews) and could be designated "non-sectarian," it would still fall under the ban of the First Amendment as construed and applied in the *Everson*, *McCollum*, *Zorach* and *Engel* cases.

B. The Lord's Prayer

The decision of this Court in the *Engel* case would seem to dispose of the issue of the constitutionality of State-sponsored collective recitation of the Lord's Prayer. It has, however, been urged that the vice in the *Engel* case was that the prayer there involved had been composed by public officials and that the decision is to be interpreted to mean no more than that the First Amendment forbids only State-sponsored recitation of prayers formulated by State officials. This, we submit, is analagous to the assertion that the mere fact that a bridge collapsed under a horse does not prove that it would have collapsed under an elephant. Whether a particular prayer is composed or adopted by government officials is constitutionally immaterial. The reason the New York Regents formulated a prayer was solely so that there should be no borrowing from the liturgy of any of the faiths, thereby avoiding any accusation of sectarianism or denominationalism. The Regents' prayer is as innocuous, non-sectarian and universal as theistic prayer can be and, if such a prayer may not be recited

in the public schools, it is more than difficult to see how a Christian prayer taken from the New Testament may be.

Indeed, after the New York courts in the *Engel* case had upheld the recitation of the Regents' prayer, the State Department of Education, in a ruling handed down by its counsel on June 14, 1960, specifically ruled that the decision did not authorize the recitation of the Lord's Prayer. Since, the opinion stated, the version of the Prayer used depends on the version of the New Testament used, "it would seem to leave no doubt that the Lord's Prayer is essentially sectarian in nature under any definition of that term." The non-sectarian prayer involved in *Engel* v. *Vitale*, it said, had been carefully designed "to stay away from any denominational involvement."

Nevertheless, since the claim that *Engel* does not invalidate State-sponsored recitation of the Lord's Prayer has been so vigorously asserted, and since it is the Lord's Prayer which is in issue in the *Murray* case, we deem it advisable to discuss this specific prayer.

The "Lord's Prayer" is from the New Testament. It appears once in The Book of Matthew (vi, 9-13) and in somewhat shorter form in The Book of Luke (xi, 2-4). On both occasions it is spoken by Jesus.

Of foremost importance is the fact that the word "Lord" in the title of the prayer refers to Jesus, and means that this is the prayer taught to Christians by the "Lord." Hastings, *Dictionary of the Bible* (1902), p. 141. It is impossible to think of the "Lord's Prayer" as other than their most important prayer because, to them, it is the only prayer that actually came from Jesus.

The intimate connection between the Lord's Prayer and Jesus is recognized by both Catholic and Protestant

writers. Becker and Peter, eds., *Our Father* (1956), p. 46; E. F. Scott, *The Lord's Prayer*, (1951), p. 124.

An examination of the specific context of the "Lord's Prayer" indicates that it was clearly intended by Jesus to be a distinctively non-Jewish prayer. In the Sermon on the Mount, he emphasized the differences between his new teachings and the traditional Jewish religion. He gives directives and rules for conduct "stressing the contrast to the Jewish ethic and introducing a new one" (Becker and Peter eds., *op. cit.*). Again and again Jesus says, "Ye have heard that it was said by them of old time * * * But I say unto you * * *"

In addition, Jesus gave new instructions as to the manner of prayer. He said, "And when thou prayest, thou shalt not be as the hypocrites are: for they love to pray standing in the synagogues and in the corners of the streets, that they may be seen of men * * * But thou, when thou prayest, enter into thy closet, and when thou hast shut thy door, pray to thy Father which is in secret." Jewish tradition calls for congregational praying in synagogues.

In this context, we can understand the intention of Jesus in pronouncing the "Lord's Prayer." Just as he gave Christians a new manner of praying, so he gave Christians a new prayer, which would be different from Jewish prayer. Although he borrowed words and phrases from the traditional liturgy, yet their order is different, their effect is different, and, most significantly, their meaning is different. As Dr. Scott has said:

> By interpreting it at any point by the Jewish parallels, we miss its meaning altogether. Jesus employed new language to convey his new ideas (*op. cit.*, p. 63).

Dr. Scott also points to the many differences in content between the "Lord's Prayer" and Jewish prayers (*op. cit.*, p. 45).

According to this eminent Protestant theologian, the phrase "Our Father" meant something very different to Jesus than it did to Jews who recited the "Avinu Shebashamayim," from which it was taken. He states that Jesus gave "a new range of meaning" to the words "hallowed be thy name." The phrase "Thy will be done" has, according to Dr. Scott, "no real parallel in the Jewish liturgies." And the idea that God will "forgive us our debts, as we forgive our debtors" is "entirely absent from Jewish prayers" (*op. cit.*, pp. 64, 83, 89, 98, 101).

In current usage, the "Lord's Prayer" is an intrinsic part of Christian worship. It has, from earliest times, been part of Christian liturgy and today constitutes the most important element of the prayers of every Christian denomination, without exception. It is recited at every service of the Protestant Church and is sometimes repeated three times in the same service (*Twentieth Century Encyclopedia of Religious Knowledge*, (1955) vol. 2, article "Lord's Prayer"). The "Our Father", in addition to being an important part of the Catholic Mass, is also a conspicuous feature of the ritual of baptism, penance and annointing the sick (Becker and Peter, eds., *op. cit.*, p. 77 ff.). In the Divine Office (prayers recited at fixed hours of the day and night by priests and others) it appears repeatedly, besides being said at the beginning and at the end. In the Monastic orders, lay brothers who knew no Latin were required to say the "Lord's Prayer" a certain number of times, often amounting to more than one hundred, a day. The "Lord's Prayer" is also an essential part

of the Roman Catechism which since 1566 has been the "official manual of popular instruction" (*Catholic Encyclopedia*, ix, p. 356; xi, p. 219; xiii, p. 121).

The centrality of the "Lord's Prayer" in Christian life has been attested to by a number of Christian writers. Sockman, *The Lord's Prayer, An Interpretation* (1947) p. 1; Fox, *The Lord's Prayer*, An Interpretation (1934) p. 9.

The American rabbinate is of the opinion that the Lord's Prayer is a Christian prayer. Of course, as has often been pointed out, its origin is Jewish. Much of what is basic in the Christian religion (as in the Mohammedan religion) has its origin in the Jewish religion; but that does not make it in its totality any less Christian or any the less unacceptable to Jews. The rabbis have uniformly stated that the recitation of the Lord's Prayer by Jewish children is inconsistent with Jewish tradition and violative of the principles of Judaism.

For these reasons, we submit, State-sponsored recitation of the Lord's Prayer in the public schools violates the First Amendment.

III. The Issue of Hostility to Religion

We submit that a judicial decision forbidding State-sponsored religious exercises such as Bible reading or Lord's Prayer recitation does not manifest hostility to religion any more than the constitutional provision on which it is based indicated hostility to religion on the part of the fathers of our Constitution.

We recognize that the equating of opposition to religious practices in the public school with opposition to religion may unfortunately be widespread. But this does not make it true.

This brief is submitted on behalf of more than 60 Jewish organizations, including the national bodies representing congregations and rabbis of Orthodox, Conservative and Reform Judaism. The thousands of rabbis and congregations who, through their representatives, have authorized the submission of this brief can hardly be characterized as being hostile to religion. Nor can this characterization be truthfully attributed to the many Christian groups and publications which have similarly expressed opposition to State-sponsored Bible reading or prayer recitation in the public schools.

Public school sponsored Bible reading and Lord's Prayer recitation are unlawful in three of the four most populous states of the Union, California, Illinois and New York. 25 Cal. Ops. A/G 316, Op. No. 53/266 (1955); *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, Ill. A G Ops. 84, Op. No. 204 (1955); statement of Dr. Charles A. Brind, Counsel to the New York State Education Department, N. Y. *Times*, Sept. 26, 1962. The combined population of these three States exceeds one-fourth of the population of the entire United States. Can it be truthfully said that the governments of these States are hostile to religion?

What this Court said in *McCollum* (at pp. 211-212) is as valid today as it was in 1948:

> To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty

> of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.

A determination that the Pennsylvania statute and the Baltimore Rule violate the First Amendment's ban on establishment would not in any way infringe upon the religious liberty of children or their parents. It would not prevent any child from reading the Bible or reciting any prayer he wished during public school hours, provided of course he did not thereby interfere with the regular course and discipline of instruction. Rather than restrict religious liberty, such a determination would further it, since it would substitute freedom of individual choice for State-imposed conduct. In American tradition, religion is a matter of individual choice; the First Amendment was written because the people did not want their religious beliefs and practices to be established by law or imposed by government. Invalidation of the regulations here challenged would place the responsibility for religious exercises where it properly belongs—in the home, the church, the synagogue and on the individual conscience.

Conclusion

For the reasons herein stated we respectfully submit that the decision in the Pennsylvania case should be affirmed and the decision in the Maryland case should be reversed.

Respectfully submitted,

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